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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

13 CR 633 (PAE)

5 MATTHEW MITROW,

6 Defendant.

7 -----x

8 New York, N.Y.
9 January 26, 2015
11:45 a.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 STANLEY J. OKULA

Assistant United States Attorney

18 MOSKOWITZ & BOOK, LLP

Attorneys for Defendant

19 BY: AVI MOSKOWITZ

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(Case called)

THE COURT: Good morning. Before proceeding here, I note that there is to be a superseding information which the defendant is to plead to. Do we have a waiver of indictment form?

MR. OKULA: We do. I have two executed waiver forms both of which were signed by the defendant and defense counsel. I am handing them up to your Honor's law clerk right now.

THE COURT: Thank you. I understand we have a photocopy of the original signed plea agreement, but which you have originally, in effect, resigned and reinitialed today, that because the original is in snowbound DC?

MR. OKULA: That is correct, your Honor. If I could just specify, the original plea agreement was signed in counterpart due to the geographical difference of the parties, but the one that has the two counterpart original signatures is with Mr. Young in Washington, DC. What I suggested to Mr. Moskowitz and the defendant and we all agreed to do was essentially we took the copy, which we had previously provided through Mr. Young to the court last week, and initialed simply the signatures that were previously affixed to it as essentially making it a new original document. I would be happy to hand it up, if your Honor wants.

THE COURT: Why don't you do that. That would be great. That's a good approach.

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1 MR. OKULA: Your Honor, may I note just one more thing
2 before we get started? Just in scanning the elements document
3 that was submitted to the court, I saw that there was omitted
4 from the statutory elements one that is included in the plea
5 agreement, that is the cost of prosecution mandatory component
6 of a Title 26 plea; here, the subscribing to false return. It
7 is more theoretical than real here in a plea case, but
8 nevertheless, it has to be listed as one of elements.

9 THE COURT: Not an element, but a penalty.

10 MR. OKULA: A penalty. I apologize. Yes, a penalty.

11 THE COURT: Thank you. I appreciate you doing that.

12 I am going to mark as Government Exhibit 1 the plea
13 agreement bearing at least the original initials of the
14 parties. I will turn to it when we get to that point in the
15 plea proceedings. Thank you, everyone.

16 Again, before I get started with the substance, thanks
17 to everyone for accommodating my chambers request to move this
18 earlier. It is for good reason.

19 Mr. Moskowitz, I have been informed that your client
20 wishes to plead guilty to Count One of a superseding
21 information as (S1) 13 CR 633 in this case, is that correct.

22 MR. MOSKOWITZ: That's correct, your Honor.

23 THE COURT: Mr. Mitrow, is that correct that you
24 intend to plea guilty to that count?

25 THE DEFENDANT: That's correct, your Honor.

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1 THE COURT: Very good.

2 Before accepting your guilty plea, I am going to ask
3 you certain questions so that I can establish to my
4 satisfaction that you wish to plead guilty because you are
5 guilty and not for some other reason. If you don't understand
6 any of my questions or you would like further opportunity to
7 consult with your attorney, will you please let me know?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Are you able to speak and understand
10 English?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: I am to now going to place you under oath.
13 Please rise for this purpose.

14 (Defendant sworn)

15 THE COURT: Do you understand, Mr. Mitrow, that you
16 are now under oath and that if you answer any of my questions
17 falsely, your answers to my questions may be used against you
18 in another prosecution for perjury?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: What is your full name?

21 THE DEFENDANT: Matthew John Mitrow.

22 THE COURT: How old are you?

23 THE DEFENDANT: 42.

24 THE COURT: How far did you go in school?

25 THE DEFENDANT: Up until the 11th grade.

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1 THE COURT: Where was that?

2 THE DEFENDANT: That was in Scotch Plains, New Jersey.

3 THE COURT: Have you ever been treated or hospitalized
4 for any mental illness?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Are you now or are have you recently been
7 under the care of a doctor or a hospital or a psychiatrist?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Tell me about that.

10 THE DEFENDANT: Psychiatrist.

11 THE COURT: When have you been under a psychiatrist's
12 care?

13 THE DEFENDANT: Since I was diagnosed with ADD and
14 dyslexia since I was 18 years old for mostly management of
15 medication.

16 THE COURT: Has that been roughly continuous treatment
17 since age 18?

18 THE DEFENDANT: It was.

19 THE COURT: Are there any other medications you're on
20 for ADD?

21 THE DEFENDANT: One medication.

22 THE COURT: What is that?

23 THE DEFENDANT: It is Wellbutrin XL, 300 milligrams.

24 THE COURT: When did you last take that?

25 THE DEFENDANT: This morning.

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1 THE COURT: What effect does it have on you?

2 THE DEFENDANT: It helps me pay attention and read a
3 little bit better.

4 THE COURT: All of which is a good thing for these
5 proceedings.

6 THE DEFENDANT: Indeed.

7 THE COURT: Does it have any negative effect on you?

8 THE DEFENDANT: None whatsoever, your Honor.

9 THE COURT: Does it affect in any way your ability to
10 speak clearly?

11 THE DEFENDANT: No.

12 THE COURT: Does it affect in any way hurt your
13 ability to comprehensively -- it sounds like it does
14 positively -- does it in any way hurt your ability to
15 understand what is going on here?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Putting aside the Wellbutrin and the care
18 of the psychiatrist, have you ever been hospitalized or treated
19 for addiction to any drugs or alcohol?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: Again, putting aside those things, have
22 you in the past 24 hours taken any drugs, medicine, or pills,
23 or drunk any alcoholic beverages?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: Is your mind clear today?

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1 THE DEFENDANT: Yes, it is, your Honor.

2 THE COURT: Do you understand what is happening in
3 this proceeding?

4 THE DEFENDANT: Yes, I do, your Honor.

5 THE COURT: Mr. Moskowitz, do you have any doubt about
6 your client's competency to plead at this time?

7 MR. MOSKOWITZ: No, your Honor.

8 THE COURT: How about you, Mr. Okula?

9 MR. OKULA: No, your Honor.

10 THE COURT: Based on Mr. Mitrow's response to my
11 questions and his demeanor as he appears before me, I find that
12 he is competent to enter a plea of guilty at this time. His
13 answers have been extremely responsive and clear, and I note
14 that counsel share that sentiment.

15 Have you had a sufficient opportunity to discuss your
16 case with your attorney?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Have you had a sufficient opportunity to
19 discuss the charge to which you intend to plead guilty, any
20 possible defenses to that charge, and the consequences of
21 entering a plea of guilty?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Are you satisfied with your attorney's
24 representation of you, including your attorney's representation
25 in connection with reaching a plea?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: I am now going to explain certain
3 constitutional rights you have. You will be giving up these
4 rights if you enter a plea of guilty. Under the Constitution
5 and laws of the United States, you are entitled a speedy and a
6 public trial by a jury on the charges contained in the
7 information. Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: At that trial, you would be presumed to be
10 innocent and the government would be required to prove you
11 guilty by competent evidence and beyond a reasonable doubt
12 before you could be found guilty, you would not have to prove
13 that you were innocent, and a jury of 12 people would have to
14 agree unanimously that you were guilty. Do you understand
15 that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: At that trial, and at every stage of your
18 case, you would be entitled to be represented by an attorney,
19 and if you could not afford one, one would be appointed to
20 represent you free of charge. Do you understand?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: During the trial, the witnesses for the
23 government would have to come to court and testify in your
24 presence and your lawyer could cross-examine the witnesses for
25 the government, object to evidence offered by the government,

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1 and if you desire, issue subpoenas, offer evidence, and compel
2 witnesses to testify on your behalf. Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: At a trial, although you would have the
5 right to testify if you chose to do so, you would also have the
6 right not to testify, and no inference or suggestion of guilty
7 could be drawn from the fact that you did not testify, if that
8 was what you chose to do. Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: At trial, the government would have to
11 prove each and every part or element of the charge beyond a
12 reasonable doubt for you to be convicted of that charge. Do
13 you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you understand that if you were
16 convicted at a trial, you would have to the right to appeal
17 that verdict?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Even at this time, right now, even as you
20 are in the process of entering this guilty plea, you have the
21 right to change your mind, plead not guilty, and go to trial.
22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: If you plead guilty and I accept your
25 plea, you will give up your right to a trial and the other

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1 rights that I have just described. There will be no trial and
2 I will enter a judgment of guilty and sentence you on the basis
3 of your guilty plea. After considering the submissions
4 relating to sentencing that I receive from you and your lawyer,
5 from the government, as well as a presentence report prepared
6 by the probation department. Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: If you plead guilty, you will also give up
9 your right not to incriminate yourself, because I will ask you
10 questions about what you did in order to satisfy myself that
11 you are guilty as charged. Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Now, the document which contains the
14 charge to which you have indicated you wish to plead guilty is
15 called an information. It has been issued by the United States
16 Attorney. It is a serious crime and you have a constitutional
17 right to require the government to present evidence to a grand
18 jury which may or may not vote to charge you with this crime.
19 Do you understand what a grand jury is?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: If the grand jury did vote to charge you
22 with this crime, the charge would be contained in a document
23 called an indictment rather than an information and an
24 indictment would be signed by the United States Attorney and
25 the grand jury foreperson. Do you understand that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you wish to give up your right to be
3 charged by a grand jury?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Counsel have handed up two copies of a
6 waiver of indictment form. Mr. Moskowitz, is this your
7 signature on the form dated today?

8 MR. MOSKOWITZ: Yes, your Honor.

9 THE COURT: Mr. Mitrow, is it your signature on the
10 form?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: When you signed this form, did you
13 understand that you were acknowledging your willingness to give
14 up your right to be indicted by a grand jury?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: I find a knowing and voluntary waiver of
17 Mr. Mitrow's right to be indicted by a grand jury. I will ask
18 my law clerk to sign this, alongside Mr. Moskowitz' signature,
19 just to be our witness. Thank you.

20 Mr. Mitrow, have you received a copy of the
21 information containing the charge against you?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Have you read it?

24 THE DEFENDANT: I have, yes.

25 THE COURT: Have you discussed it with your attorney?

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1 THE DEFENDANT: Yes, I have, your Honor.

2 THE COURT: Do you understand that you are charged in
3 Count One with filing a false tax return in violation of
4 26 U.S.C. 72061?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you understand that the maximum
7 possible penalty for this crime is three years imprisonment?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that the maximum fine
10 for this crime is the greatest of \$250,000, twice the gross
11 pecuniary gain derived from the offense, or twice the gross
12 pecuniary loss to people other than you resulting from the
13 offense?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: If you plead guilty to this crime, you may
16 receive a term of one year supervised release. Do you
17 understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Supervised release means that you will be
20 subject to monitoring when you're released from prison. There
21 are terms of supervised release with which you must comply. If
22 you don't comply with them, you can be returned to prison
23 without a jury trial for all or part of the term of supervised
24 release imposed by the court. Under those circumstances, you
25 would not be given any credit towards that term for the time

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1 you served in prison or as a result of your sentence for this
2 crime, nor will you necessarily be given any credit towards
3 that term for any time you had spent on post-release
4 supervision. Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: For pleading guilty to this crime, you
7 will be required to pay a mandatory \$100 special assessment.
8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: For pleading guilty to this crime, you may
11 be required to pay restitution to any person or persons injured
12 as a result of your criminal conduct. Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: For pleading guilty to this crime, you may
15 be compelled to forfeit any and all property constituting and
16 derived from proceeds obtained from your criminal conduct. Do
17 you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: As Mr. Okula pointed out, you may also be
20 assigned to pay the costs of the prosecution. Do you
21 understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you also understand that if I accept
24 your guilty plea and adjudge you guilty, that may be deprive
25 you of valuable civil rights, such as the right to vote, the

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1 right to hold public office, the right to serve on a jury, and
2 the right to possess any kind of firearm?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Are you a United States citizen?

5 THE DEFENDANT: Yes, I am.

6 THE COURT: Under current law, there are sentencing
7 guidelines as well as other factors set forth in the sentencing
8 statutes that a judge must consider in determining a sentence.
9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Have you spoken with your attorney about
12 the sentencing guidelines and those other factors?

13 THE DEFENDANT: I have, your Honor.

14 THE COURT: Do you understand that the court will not
15 be able to determine what the guideline range is that will form
16 a part of my determination of what a reasonable sentence would
17 be in your case until after a presentence report has been
18 prepared and until after you and your attorney and the
19 government's attorney have all had the chance to challenge any
20 of the facts reported in that report by the probation officer?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you understand that even though the
23 government has provided you with its current calculation of
24 your sentence under the sentencing guidelines, the plea
25 agreement, and even though the defense has stipulated to that

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1 calculation, that range of between 10 and 16 months
2 imprisonment is not binding on the probation department and is
3 not binding on the court?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that even after I have
6 determined what guideline range applies to your case, I have
7 the discretion under the current law to impose a sentence that
8 is higher or lower than the one suggested by the sentencing
9 guidelines?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that if your attorney or
12 anyone else has attempted to predict what your sentence will
13 be, their prediction could be wrong. No one, not your
14 attorney, not the government's attorney, no one can give you
15 any assurance of what your sentence will be, because I am going
16 to decide your sentence and I am not going to do that now and I
17 really cannot do that now. Instead, I am going to wait until I
18 receive the presentence report prepared by the probation
19 department, I am going to wait until I receive the party's
20 sentencing submissions, I am going to review and study all of
21 those materials carefully, I am going to do my own independent
22 calculation how the sentencing guidelines apply to your case,
23 but most of all, I am going to determine what a reasonable
24 sentence is to you based on all of the factors that are set
25 forth in the sentencing statute, which is known as Section

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1 3553(a). Do you understand all of that?

2 THE DEFENDANT: Yes, I do, your Honor.

3 THE COURT: Have you discussed these issues and the
4 overall sentencing process with your attorney?

5 THE DEFENDANT: I have, your Honor.

6 THE COURT: Even if your sentence is different from
7 what you expect, even if it is different from what your
8 attorney or anyone else has told you it might be, even if it is
9 different from the guideline range that appears in your plea
10 agreement, you would still be bound by your guilty plea and you
11 would not be allowed to withdraw your plea of guilty. Do you
12 understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Has anyone threatened you or anyone else
15 forced you in any way to plead guilty?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Counsel has handed up the plea agreement
18 in this case marked as Government Exhibit 1. I note on the
19 back the photocopied signatures of Richard Tarlowe, the Chief
20 of Complex Frauds Crime Unit, and it must be Andrew Young,
21 Special Assistant United States attorney. Are those the
22 signatures, Mr. Okula, of those people?

23 MR. OKULA: Yes, your Honor.

24 THE COURT: I notice as well that there are initials
25 that appear next to those names. In nonphotocopied real ink,

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1 are those your initials?

2 MR. OKULA: They are indeed. Based on my
3 understanding and my involvement in supervision of this matter
4 and my involvement in the approval of the plea agreement, so I
5 had preexisting knowledge that those signatures had been
6 affixed, your Honor.

7 THE COURT: Very good.

8 Mr. Moskowitz, I see your photocopied signature from
9 January 14 and your initials which I take it were placed on
10 this today. Is that, in fact, your signature and are those, in
11 fact, your initials?

12 MR. MOSKOWITZ: Yes, your Honor.

13 THE COURT: Mr. Mitrow, same question to you, I see
14 here your photocopied signature from January 13 and your
15 initials. Are those, in fact, your signature and your
16 initials, the latter put on today?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Very good. Did you read this agreement
19 before you signed it, Mr. Mitrow?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Did you discuss it with your attorney
22 before you signed it?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Did you believe that you understood the
25 agreement at the time that you signed it?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Did you willingly sign this agreement?

3 THE DEFENDANT: I did, your Honor.

4 THE COURT: Did anyone force you to sign it?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Are there any agreements between the
7 parties apart from those that are set out in this agreement?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Government counsel, would you kindly
10 please summarize the terms of the plea agreement?

11 MR. OKULA: Yes, your Honor. The points of the plea
12 agreement are as follows:

13 First, the defendant is agreeing to waive indictment
14 and is agreeing to the filing by the United States Attorney of
15 the superseding information that contains a single count
16 charging him with subscribing to a false tax return for the
17 2008 tax year. In exchange, your Honor, the government is
18 agreeing that the defendant will not be further charged based
19 on the conduct that is set out in the third superseding
20 indictment. By implication, the government is going to move to
21 dismiss the underlying charge at the time of sentencing.

22 There is also a series of additional agreements.

23 THE COURT: I think that it is more than an
24 implication.

25 MR. OKULA: Explicitly, your Honor.

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1 THE COURT: The government will move to dismiss any
2 open counts.

3 MR. OKULA: Yes, your Honor.

4 The defendant is agreeing to pay restitution based on
5 the tax loss that is currently calculated in the amount of
6 \$30,822. There is an agreement, a stipulated guideline range
7 of level 12 and an attendant incarceration range of 10 to
8 16 months. The parties are stipulating that that is the
9 applicable guidelines range.

10 The government is agreeing that it will not appeal any
11 sentence that the court may impose that is within or above that
12 stipulated range, and defendant is agreeing that he will not
13 appeal any sentence that is within or below the stipulated
14 guideline range.

15 The parties are agreeing that no departure, as
16 formally understood under the guidelines from the stipulated
17 range, is appropriate. Nevertheless, both parties remain
18 unfettered to argue to the court the 3553(a) factors about
19 where within the statutory maximum the court should impose a
20 sentence.

21 There is one additional important provision, your
22 Honor; that is, there is a waiver of venue provision in the
23 agreement based on the tax charge that is contained in the
24 superseding information.

25 Those are the salient points of the agreement, your

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Honor.

THE COURT: Very good. Thank you. Very helpful.

Mr. Moskowitz, are you in agreement with the government's summary of the salient terms?

THE DEFENDANT: Yes, your Honor.

THE COURT: Mr. Mitrow, did you hear and understand Mr. Okula's summary of those terms?

THE DEFENDANT: I do, your Honor.

THE COURT: I am not going to review all of them. I have to highlight several of the terms of the agreement. As Mr. Okula stated, the parties have stipulated that the guidelines here call for a term of imprisonment between 10 and 16 months. Again, do you understand that that stipulation binds the government and it binds you, but it doesn't bind me, because I have to make my own independent calculation on how the guidelines apply?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you also understand under this agreement that you are giving up your right to ask within the limited guidelines framework that I depart below the guideline range that is calculated here, even though you're not giving up your right to ask that I sentence you below that range based on the broader set of factors that I can consider under Section 3553(a)?

THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Do you understand that as part of the plea
2 agreement, you have agreed to make restitution in the amount of
3 \$30,822 to the IRS?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you also understand that under the
6 agreement, you have agreed to file accurate and personal tax
7 returns for the calendar years 2008 and 2009 and to do so two
8 weeks before the date of sentencing?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you understand as well under this
11 agreement that you have waived any change you might have to
12 venue in this district?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Finally, do you understand that under the
15 agreement, you are giving up your right to appeal or otherwise
16 challenge your sentence so long as I don't sentence you to more
17 than 16 months imprisonment?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Has anyone made any promise or done
20 anything other than what is contained in the plea agreement to
21 induce you to plead guilty?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Has anyone made a promise to you as to
24 what your sentence will be?

25 THE DEFENDANT: No, your Honor.

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1 THE COURT: You understand that the agreement doesn't
2 bind any federal, state, or local prosecuting agency, other
3 than the United States Attorney for this district, and with
4 respect to tax offenses, the Tax Division of the Department of
5 Justice?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you still wish to plead guilty pursuant
8 to this agreement?

9 THE DEFENDANT: I do, your Honor.

10 THE COURT: Having covered all that, Mr. Mitrow, I
11 would like you now to tell me in your own words what you did
12 that makes you believe you're guilty of the charge in the
13 information.

14 THE DEFENDANT: In 2009, I filed a false tax return by
15 excluding approximately \$90,000 in income.

16 THE COURT: Did the return contain a written
17 declaration, that is, being made under penalty of perjury?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Did you know at the time that you
20 subscribed to and filed that tax return that it was not true
21 and correct as to a material matter, specifically as to your
22 income?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Did you know at the time that what you
25 were doing was wrong?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Did you know that you were committing a
3 crime?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Are you pleading guilty voluntarily and of
6 your own free will and because you are, in fact, guilty?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Does government counsel agree that there
9 is a sufficient factual predicate for a guilty plea?

10 MR. OKULA: We do, indeed, your Honor.

11 THE COURT: Does defense counsel?

12 MR. MOSKOWITZ: Yes, your Honor.

13 THE COURT: Does defense counsel know of any valid
14 defense that would prevail at trial or any reason why your
15 client should not be permitted to plead guilty?

16 MR. MOSKOWITZ: No, your Honor.

17 THE COURT: Can government counsel represent, had the
18 case gone to trial, it had sufficient evidence to establish a
19 conviction?

20 MR. OKULA: Yes, your Honor.

21 THE COURT: Mr. Mitrow, you acknowledging that you
22 are, in fact, guilty as charged in the information and because
23 I am satisfied you know your rights, including your right to go
24 to trial, because I am satisfied that you are aware of the
25 consequences of your plea, including the sentence which may be

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1 imposed, because I find that you're voluntarily pleading
2 guilty, I accept your guilty plea and enter a judgment of
3 guilty to the one count of which you pled guilty. This is
4 important.

5 The next is step in your case involves the sentencing
6 process. I have earlier referred to a few times to the
7 presentence record. The probation department is going to want
8 to interview you in connection with the presentence report that
9 it will prepare. If you choose to speak with the probation
10 department, please make sure anything you say is truthful and
11 accurate. I read those reports carefully. They are often
12 quite important to me in determining what sentence to impose.

13 You and your counsel have a right to examine the
14 report and to comment on it at the time of sentencing. I urge
15 you to read the report and discuss it with your attorney before
16 sentencing. If there are any mistakes in it, please point them
17 out to your lawyer so he can bring them to my attention before
18 sentencing.

19 Will you agree to do that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Mr. Moskowitz, I take it this is not a
22 case in which your client is seeking an expedited sentence?

23 MR. MOSKOWITZ: That's correct, your Honor.

24 THE COURT: One moment.

25 Counsel, how is Thursday, June 4? Any problem with

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1 that day?

2 MR. OKULA: That is fine, your Honor.

3 MR. MOSKOWITZ: Fine, Judge.

4 THE COURT: How about June 4 at 11:00 a.m.?

5 MR. MOSKOWITZ: That's fine, Judge.

6 THE COURT: Defense submissions are due two weeks
7 before sentencing. The government's submission is due one week
8 before. On the Southern District website, you can find a
9 reprint of my procedures for filing sentencing submissions with
10 the clerk of the court, which are completely customary for the
11 district.

12 Mr. Moskowitz, you must arrange for your client to be
13 interviewed by the probation department within the next two
14 weeks. Mr. Okula, the government must provide its case summary
15 to the probation department also within the next two weeks.

16 MR. OKULA: Yes, your Honor.

17 THE COURT: I take it the defendant remains out on
18 bail?

19 MR. OKULA: Yes, your Honor. We respectfully urge
20 that those conditions or that liberty continue.

21 THE COURT: I am happy to do that. I do, though, need
22 to give an admonition to Mr. Mitrow.

23 Mr. Mitrow, do you understand that all of the
24 conditions on which you have been released until now continue
25 to apply and that a violation of any of those conditions can

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1 have serious consequences for you at the time of sentence?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: You must be in this courtroom for
4 sentencing at the time and date set or you will be guilty of a
5 separate crime called bail jumping and subject to a fine or
6 prison term in addition to whatever sentence you may receive
7 for the crime to which you have just pled guilty. Do you
8 understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Thank you. Anything further from the
11 government?

12 MR. OKULA: Nothing, except thank you again for
13 allowing the substitution this morning, your Honor.

14 THE COURT: Of course. I thank you for being flexible
15 at the change of schedule.

16 Anything from the defense?

17 MR. MOSKOWITZ: No, your Honor. Thank you.

18 THE COURT: Thank you. We stand adjourned.

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